

United States District Court
District of Massachusetts

Larissa V. Barbosa
Petitioner

- VS -

Immigration and Customs Enforcement,
et al

Contents

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8 pages.
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FILED
CLERK'S OFFICE
United States District Court
District of Massachusetts

Larissa Barbosa, A 76 489 823
Petitioner.

- vs -

John E. Ashcroft, Attorney General
Tom Ridge, Secretary of Homeland Security
Bruce Chabbourne, Director of Detention
and Removal, Boston Field Office,
Bureau of Immigration and Customs
Enforcement;
Kathleen M. Dennehy, Acting Commissioner
Massachusetts Department of Correction,
Respondents.

Petition for a Writ of Habeas Corpus
Pursuant to 28 USC § 2241

Petitioner, Larissa Barbosa, hereby
petitions this Court for a writ of
habeas corpus to remedy her unlawful
detention and to enjoin her continued
unlawful detention by the respondents.
In support of this petition and
complaint for injunctive relief,
petitioner alleges as follows:
1. Petitioner Barbosa, a native and

Citizen of Cape Verde came to United States on her Aunts' Visa at age 8. Petitioner was ordered deported in June 2000 and was taken into immigration custody since February 2nd, 2004. She has been detained by the Bureau of Immigration and Customs Enforcement (BICE).

2. Respondent John D. Ashcroft is the Attorney General for the United States and is responsible for the administration of BICE and the implementation and enforcement of the immigration laws. As such, he is the legal custodian of petitioner.
3. Respondent Tom Ridge is the Secretary of Homeland Security and is responsible for the administration of BICE and the implementation and enforcement of the immigration laws. As such, he is the legal custody of petitioner.
4. Respondent Bruce Chadbourne, is the Interim Field Office Director for Detection and Removal, Boston Field Office, Bureau of Immigration and Customs Enforcement, Department of Homeland Security. As such, he is the local BICE official who has

immediate custody of the petitioners.

5. Respondent Department of Homeland Security is the agency charged with implementing and enforcing the immigration laws.

6. Respondent Kathleen M. Dennehy is the Acting Commissioner, Massachusetts Department of Corrections.

Because BICE contracts with state prisons such as Bristol County House of Corrections, N. Dartmouth, Mass. to house immigration detainees as petitioners, she has immediate custody of petitioners.

Custody

6. Petitioner is detained at the Bristol County House of Correction located at 400 Faunce Corner Rd, N. Dartmouth, Mass. BICE has contracted with the Bristol County Sheriff's Office to house detainees.

Jurisdiction

7. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 USC § 1101 et seq. as amended by the Illegal Immigration

Refugee and Immigration Responsibility Act of 1996 ("IIRIRA"), Pub L No 104-208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq. This Court has jurisdiction under 28 U.S.C. § 2241, art 129 cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as the petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, treaties of the United States. See *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491 (2001).

Venue

8. Venue lies in the District of N. Dartmouth, Mass., because petitioner is currently at Bristol County House of Corrections, N. Dartmouth, Mass., is also proper because petitioner is in the custody of Respondent Bruce Chaboune, Interim Field Office Director of this District, which encompasses Massachusetts. 28 U.S.C. § 1391.

Exhaustion of Remedies

9. Petitioner has exhausted her administrative remedies to the extent required by law, and her only remedy

is by way of this judicial action. After the Supreme Court decision in Ludvydas, the Department of Justice issued regulations governing the custody of aliens ordered deported. See 8 U.S.C. 1224.4. Petitioner was ordered deported on June 2000 and was taken into BIA custody February 2, 2004.

10. Petitioner filed this petition for habeas Corpus pro se.

11. No statutory exhaustion requirements apply to petitioner.

Statement of Facts

A. Background

12. Petitioner Larissa Barboza was born Praia, Cape Verde Islands, December 1, 1979. She came on her Aunt's Visa, to the United States. Her mother abandoned her at birth and she came to United States to meet her. In her mother's home, she was subject to physical, mental and verbal abuse. After several runaways, she went into DSS custody until age 20. (DSS) Department of Social Services took her into custody and procured her employment authorization, social security card, home placement, they were to initiate her permanent resident status. She missed a court date due to

DSS failure to bring ^{her} ~~me~~ to the Court date scheduled and as a result she was denied and placed on final deportation in Absentia. Petitioner is a single mom with 2 Children, both American Citizens ages 1 and 4. Petitioner is their primary Care-taker.

Petitioner has had full-time employment in several places, paying state and federal taxes. Petitioner has her own apartment.

13. Petitioner has several shop-lifting charges starting from when she was a minor into Adulthood and an assault and battery charge on her brother, they had a sibling fight over some disagreement.

Petitioner never served prison time but given probation time.

14. Petitioner has been on a final order of deportation since June 2000 but has been in (B) ICE Custody since February 2, 2004.

15. Deportation is harsh and cruel and it will create irreparable harm and suffering to ~~my~~ petitioner and her United States Citizen Children.

(B) ICE ordered petitioner deported in absentia due to no contact of hers. Petitioner was a ward of the state.

17. Petitioner deserves her day in court.

18. Petitioner's deportation became administratively final June 2000. Petitioner did not appeal the order of the IJ.

Legal Framework for Relief Sought

19. In *Zadvydas*, the Supreme Court held that "8 U.S.C. § 1232(c)(2), when read" in light of the Constitution's demands, limited an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States.

Id. 121 S.Ct. at 2498. A "habeas court must (first) ask whether the detention in question exceeds a period reasonably necessary to secure removal." *id.* at 250.

20. (B) ICE had over 4 years to carry out a deportation order.

21. Petitioner continued detention violates his right to substantive due process by depriving her of her core liberty interests to be free from bodily restraint.

22. Under the Due Process Clause of the United States Constitution, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. The petitioner in this case has been denied that opportunity as there is no administrative mechanism in place for the petitioner to demand a decision, ensure that a decision will ever be made, or appeal a custody decision that violates *Zadvydas*.

Prayer For Relief

Wherefore petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter.
2. Grant petitioner a writ of habeas corpus directing respondents to immediately release the petitioner from custody.
3. Order Respondents to refrain from transferring the Petitioner out of the jurisdiction of the BICE Boston District Director during the pendency of these proceedings and while the Petitioner remains in Respondents custody; and
4. Grant any other further relief which this Court deems just and proper.

Respectfully submitted,

Xarissa Barber
400 France Corner Rd
N. Dartmouth Mass 02747
Dated Feb 26, 2004.

Certificate of Service

I Certify that a true copy of the above documents (Petition for a Writ of Habeas Corpus) was served by mail upon the following:

Xarissa Barber 2/26/04

1. Bruce Chadbourne, Interim Field Off
DHS/ Bict Detention and Removal Office
574 Federal Building, 17th Fl
15 Newbury St, Boston MA 02202
2. Attorney General Ashcroft
United States Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20528
3. Secretary of Homeland Security Tom Ridge
U.S. Department of Homeland Security
Washington, DC 20528
4. Kathleen M. Dennehy, Acting Commisr.
Mass Department of Corrections, Central Hq
50 Maple Street
Milford, Ma 01757

United States District Court
District of Massachusetts

Larissa V. Barbosa, A76 489 823
Petitioner

-VS-

Immigration and Customs Enforcement,
Bruce Chadbourne, Director, et al,
Respondents.

Motion for a pro se applicant
to proceed in forma pauperis.
Clerk of Courts:
Petitioner Barbosa, prays the Court
to allow her to proceed in her
Writ of habeas Corpus petition
in forma pauperis. Petitioner asks
the Court's permission to waive all
fees. Petitioner is indigent and
has no source of income.
Petitioner has enclosed her prison
ledger.

Respectfully submitted

Larissa Barbosa

Bristol County Jail

400 Tannee Corner Rd

N. Dartmouth, Mass 02747

Dated February 26, 2004,

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Larissa Barbosa

DEFENDANTS

*Bruce Charbourne, Interim Field
DHS/BICE, et. al. Official Director*

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

201 MAR -1 P 3:05

*DISTRICT COURT
DISTRICT OF MASS.*

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

Suffolk

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Pro Se

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Federal Administrative Action <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. 5241 (Petitioner is detained by Bureau of Immigration + Customs Enforcement)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB# 1125-0003
Fee Waiver Request

FEE WAIVER REQUEST

Larissa Barbosa

Name

A 76 489 823

Alien Number ("A" Number)

I, Larissa Barbosa, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I am the person above and that I am unable to pay the fee. I believe that my appeal/motion is valid, and I declare that the following information is true and correct to the best of my knowledge.

Assets

Wages, Salary \$ 0 /month

Other Income 0 /month
(business, profession,
self-employment, rent
payments, interest, etc.)

Cash 0

Checking or Savings Account 0

Property 0
(real estate, automobile,
stocks, bonds, etc.)

Other Financial Support 0 /month
(public assistance, alimony,
child support, parent, spouse,
friends, other family members, etc.)

Expenses (including dependents)

Housing \$ 0 /month
(rent, mortgage, etc.)

Food 0 /month

Clothing 0 /month

Utilities 0 /month
(phone, electric, gas,
water, etc.)

Transportation 0 /month

Debts, Liabilities 0 /month

Other 0 /month
(specify)

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is one (1) hour. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

Larissa Barbosa
Signature

2/26/04
Date

Appendix M

Form EOIR-26A
September 2002

A 76 489 823

From : 02/14/2004 To : 02/20/2004

Instno: DWC

Comment	Trx Date	Time	Batch /Inv #	Trx Type	Invoice	Deposit	Withdrawal	Balance Forward
ID 129335	Name BARBOSA, LARISSA			Block A		Previous Balance		80.36
Sales Transaction	02/17/2004	10:12	I#131265	I	61.91			18.45

Deposits 0 For \$ 0.00

Withdraws 0 For \$ 0.00

Invoices 1 For \$ 61.91

A 76. 489 523

From : 01/31/2004 To : 02/06/2004

Instno: DWC

Comment	Trx Date	Time	Batch /Inv #	Trx Type	Invoice	Deposit	Withdrawal	Balance Forward
ID 129335	Name BARBOSA, LARESSA			Block D	15	Previous Balance		0.00
MIKE SLAYTON	02/05/2004	08:12	B#39506	D		39.00		39.00

Deposits 1 For \$ 39.00

Withdraws 0 For \$ 0.00

Invoices 0 For \$ 0.00